

**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

JERALD BOITNOTT,  <p style="text-align: center;">Plaintiff,</p> <p>v.</p> HOME DEPOT U.S.A., INC.,  <p style="text-align: center;">Defendant.</p>	Case No. 19-CV-944  <p style="text-align: center;"><b>NOTICE OF REMOVAL OF ACTION PURSUANT TO 28 U.S.C. §§ 1331 AND 1441(c) (FEDERAL QUESTION)</b></p>
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**TO: CLERK OF THE UNITED STATES DISTRICT COURT, DISTRICT OF MINNESOTA, PLAINTIFF AND HIS ATTORNEY OF RECORD**

**PLEASE TAKE NOTICE** that pursuant to 28 U.S.C. sections 1331, 1441, and 1446, Defendant Home Depot U.S.A., Inc. (“Defendant”) by and through its attorneys, hereby removes to the United States District Court for the District of Minnesota the above-captioned matter of *Jerald Boitnott v Home Depot U.S.A., Inc.*, which is currently pending in the State of Minnesota District Court, Second Judicial District for the County of Ramsey (hereinafter the “State Court Action”). As set forth below, removal is proper under federal question jurisdiction.

**I. SERVICE OF THE COMPLAINT**

1. On March 18, 2019, Plaintiff JERALD BOITNOTT (“Plaintiff”) served an unfiled Summons and Complaint on Defendant in the State of Minnesota District Court, Second Judicial District for the County of Ramsey, entitled *Jerald Boitnott v. Home Depot U.S.A., Inc. d/b/a Home Depot*.

2. The Complaint asserts violations of the Americans with Disabilities Act (“ADA”). (Complaint ¶¶41-63.)

**II. TIMELINESS OF REMOVAL**

3. Defendant was served with a copy of the Summons and Complaint on March 18, 2019. Accordingly, this Notice of Removal is timely as it is being filed within thirty days of

service. *See* 28 U.S.C. § 1446(b)(2)(A). Attached as Exhibit A to this Notice of Removal are true and correct copies of all of the pleadings, processes and orders that have been served upon Defendant. Defendant has not yet responded to the Complaint. There are no other named Defendants.

### **III. REMOVAL JURISDICTION BASED ON FEDERAL QUESTION**

4. This Court has original jurisdiction over this action pursuant to 28 U.S.C. section 1331 because the Complaint poses a federal question. Regardless of whether a Complaint pleads only state causes of action, a claim can invoke federal question jurisdiction if it raises a federal issue of law. *Grable & Sons Metal Prods. v. Darue Eng'g & Mfg.*, 545 U.S. 308, 312-14 (2005). The U.S. Supreme Court has “recognized for nearly 100 years that in certain cases federal-question jurisdiction will lie over state-law claims that implicate significant federal issues.” *Id.* at 312. “The doctrine captures the commonsense notion that a federal court ought to be able to hear claims recognized under state law that nonetheless turn on substantial questions of federal law, and thus justify resort to the experience, solicitude, and hope of uniformity that a federal forum offers on federal issues.” *Id.*

5. Plaintiff’s lawsuit is based exclusively on alleged violations of the ADA, 42 U.S.C. section 12181, et seq. (Complaint ¶¶41-63.) Based on Plaintiff’s own allegations, an examination of liability under the ADA is necessary to adjudicate his claims. Therefore, his lawsuit raises a question of federal law, rendering removal proper.

### **IV. VENUE**

6. Venue is proper in the District of Minnesota pursuant to 28 U.S.C. § 1441(a), 1446(i) and 84(c), because the county in which the State Court Action is pending is found within this District.

### **V. NOTICE TO PLAINTIFF**

7. Contemporaneously with the filing of this Notice of Removal in the United States District Court for the District of Minnesota, written notice of such filing will be served on Plaintiff’s counsel of record. As nothing has been filed in the State of Minnesota, no notice is required to the District Court for the County of Ramsey.

8. The undersigned counsel for Defendant has read the foregoing and signs the Notice of Removal pursuant to Rule 11 of the Federal Rules of Civil Procedure, as required by U.S.C. ¶ 1446(a).

**WHEREFORE**, Defendant requests that the State Court Action pending before the District Court of the State of Minnesota for the County of Ramsey be removed to the United States District Court for the District of Minnesota.

Dated: April 4, 2019

Respectfully Submitted,

s/Colleen O. Kaufenberg

Colleen O. Kaufenberg

Bar Number #186193

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